

The 24th December, 1981

No. 9(I)-81/6 Labl 14939.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired), Sole Arbitrator in respect of the dispute between Shri Shiv Sagar, son of Shri N.P. Kanu workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonepat.

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DY. LABOUR COMMISSIONER, HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI-110027

Shri Shiv Sagar, son of Shri N.P. Kanu (Workman)

versus

The management of M/s Hindustan Everest Tools Ltd., Village Jatheri, Sonepat

Appearances—

1. Shri Shiv Sagar along with Shri Chander Singh.
2. Shri U.C. Pant along with Shri D.N. Gupta.

ARBITRATION AWARD

The above-named parties have appointed me as a sole arbitrator in terms of arbitration agreement dated 29th April, 1981, under section 10A (3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the *Haryana Government Gazette (Extraordinary)*,—vide No. ID/RTK/67/81/26805, dated 27th May, 1981 :—

The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not to what relief the workman is entitled to ?

On receipt of the notification, usual notices were issued to the parties. The parties made their appearances, filed the statement of claims, written statements as well as rejoinder. The management filed copies of documents in support of their contention in this case whereas the representative of the workmen filed documents collectively for all the cases without being written by any individual worker. The pleadings of the parties gave rise to the issues which were framed with their consent as under :—

- (1) Whether the workman was unauthorisedly absent exceeding 10 days from duty ?
- (2) Whether the action taken by the management tantamounts to retrenchment ; if so, to what relief he is entitled to ?

Thereafter, the parties adduced their evidence and also advanced their arguments, copy of which was given in writing. The workman appeared myself as lone witness in his case. Shri Shiv Sagar deposed that he resorted to Dharna in Nehru Place (H.O. of the Company) from 9th March to 3rd April, 1981 in support of their demands. He added that the Dharna was within the knowledge of the management and he denied the receipt of any letter of the management during this period. He further stated that he reported for duty on 4th April, 1981, as the Dharna was lifted on 3rd April, 1981, with the intervention of the Labour Department, but the Chowkidar refused entry on 4th April, 1981. He added that he did not write to the management about taking him back on duty because the Labour Department intervened. In this cross-examination he admitted that he did not inform the management about his dharna nor he could confirm if his Union Secretary wrote about it to the management. He stated that about 30-32 workers were on Dharna. He admitted that he gave his address whenever he was away from his house. But denied to have received letters dated 11th March, 1981 and 14th March, 1981, sent under UPC by the management and also denied the receipt of Registered A/D letter dated 2nd April, 1981, copy of which was sent to his permanent address at Assam. He admitted not to have written to the management about the incident of refusal by the Chowkidar on 4th April, 1981.

While the management examined Sarvshri U.C. Pant, Dy. Manager (Personnel) Mr. R.K. Dixit (Personnel Officer), Hira Singh, Head Watchman, Rajpal and Niranjan Singh, Watchmen, as witnesses.

Shri Pant stated that he visits H.O. (Nehru Place) as an official routine and also visited the same during 9th March to 3rd April, 1981. He met Shri Jagbeer Singh and Janardhan Ojha and exchanged 'Ram Ram' as well as with some other workers too. He further stated that there were many workers who after performing their duties visited Nehru Place for Dharna and the number varied from time to time, as the number was not fixed nor the workers. He stated that the list of workers who are dismissed, discharged or resigned, etc., is given to the Security Supervisor to ensure that their workers are not allowed to enter the factory again. Only two workers, namely, Sarvshri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981 as told to him by Shri Hira Singh, Head Watchman. But these workers did not wait at the gate for meeting him though he did not take more than half an hour to reach his office. He further deposed that there was intervention from the Labour Department but without any fruitful result. A copy of the Standing Order is displayed on the notice-board and the leave procedure is generally known to the workers. He added that the workers, whose cases are under arbitration did not send any written explanation regarding their un-authorised absence despite notices issued excepting 2 workers, namely, Jagbeer Singh and Janardhan Ojha, who requested to take back on duty which was received very late. In his cross-examination, he admitted that there was conciliation meeting on general demand notice, dated 6th January, 1981 which has since been rejected and filed by the Labour Department,—*vide* their letter No. 38707, dated 21st August, 1981. He denied to have received the hunger-strike notice,—*vide* letter, dated 16th March, 1971, Exb. W-4. He further confessed to have met the Labour Minister, Haryana, when the Deputy Labour Commissioner, Sonepat had called a conciliation meeting where he explained the factual position to the Minister. He denied the receipt of letters, dated 17th March, 1981, Ex. W-5 but admitted the letters, dated 3rd April, 1981, Exb. W-6 and the Management letter, dated 15th March, 1981, Exb. W-7, letter, dated 17th March, 1981, Exb. W-8 and letter, dated 19th September, 1981, Exb. W-9. He later denied that the names of the workmen have been struck off and affirmed that the workers who lost their lien on employment was due to unauthorised absence and denied any such action has been taken due to their union activities.

Shri Hira Singh, Head Watchman stated that he was on duty on 4th April, 1981 from 7 a.m. to 7 p.m. Sarvshri Ram Chander and Suresh Kumar approached him at about 9 a.m. after being denied the entry by the Watchman and wanted to meet Shri U.C. Pant. He went inside to seek instructions from Shri Pant, who instructed him to bring them in his office. But on his return he did not find Sarvshri Ram Chander and Suresh Kumar at the gate. He added that no other workman came to the gate and met him on that day. In his cross-examination, he affirmed that he was on duty on 4th April, 1981 and denied any knowledge about dharna by workers in Nehru Place. He also added that no other workman excepting Sarvshri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981. He vehemently denied that he has been tutored by the management to tend his evidence.

Shri Rajpal and Shri Niranjan Singh, Watchmen, deposed that they were on duty on 4th April, 1981 at gate No. 1. Only Sharvshri Ram Chander and Suresh Kumar were refused entry on that day on the advice and instructions received from the Management and the Head-Watchman was informed who took further action. They further added that no other workman came on that day and stated that they know the leave procedure as well as the standing order. Shri Rajpal Watchman, deposed that he was on duty on 19th April, 1981 from 7 a.m. to 3 p.m. 19th April, 1981 being Sunday, the factory was closed being weekly rest day, the question of Sarvshri Janardhan Ojha and Jagbeer Singh coming on duty on that day does not arise. In his cross-examination he told that he knew Sarvshri Janardhan Ojha and Jagbeer Singh. He told that he gets knowledge about standing orders from Time Office and there was no other workers at gate excepting Sarvshri Ram Chander and Suresh Kumar on 4th April, 1981.

Shri Rakesh Kumar Dixit (Personnel Officer) while tendering the evidence explained the procedure adopted in case of absenting workers and showed the muster roll for the year, 1981 wherein the word 'left' have been recorded against the names of workers whose cases are under arbitration. He also deposed that he heard that workers, namely, Vikramapal, Chandrapal, Ram Chander and Bagedan Prasad had got employment with M/s. Super Tools and Zandu Forgings, Bhiwadi (Raj). In his cross-examination, he could not tell the name of worker, who gave this information to him nor he had any knowledge about the agitation as he joined subsequently.

The parties also advanced their arguments :

The learned representative of the workman drew my attention to the illegality of the orders passed by the Management by invoking Clause 15 of the Standing Order as there was no disobedience or defiance of the standing orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for the acceptance of their justified demands and the Dharna was within the knowledge of the Management. Thus it could not be considered as absent from duty and striking off their names was uncalled for. He further elucidated that there are no such circumstances from which it can be inferred that he had left the services or had any such intentions. In this connection, he relied on the following awards contained in the cases cited below :—

- (1) G.T. Lad *versus* Chemical and Fibres India Ltd., 1979-LIC P. No. 290.
- (2) Buckingham Co. *versus* Venkatiah-LLJ-1963 page No. 638.

H. also questioned the bonafides of the management in acting in harsh and perverse manner to crush the peaceful and constitutional activities of the union. He further challenged the action of the management that the termination tantamounted to retrenchment in the light of recent pronouncements of the Supreme Court as under :—

- (1) State Bank of India *versus* Subramaniam-67-1-LLJ-278.

- (2) Hindustan Steel Ltd., *versus* Presiding Officer, Labour Court 1976. LIC-P. 766.
- (3) Delhi Cloth and General Mills Co. Ltd., *versus* Shambunath Mukherjee-80 LLJ-Page No. 1.
- (4) Mohan Lal *versus* Bharat Electronics Ltd., 1981-Page-LIC-806,
- (5) Santosh Gupta *versus* State Bank of Patiala-1980-LIC-P. 687.

He accordingly contended that the management did not observe the conditions precedent to retrenchment and committed illegality, thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the Management pointed out that the workmen accepted the actum of the absence exceeding 10 days without permission from the management and without giving individual intimation; it has also been admitted that no written requests was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workmen was on dharna excepting his lone statement. The number of workmen on dharna, period of dharna etc. have different versions and thus cannot be accepted that a group of workers i.e. 31 or so were constantly on dharna. He refuted the allegation of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position,— vide their letters Exhibit No. W-7 and 8 and the standing has been vindicated by the Labour Department, Haryana by rejecting the demand notice,—vide endorsement No. 38707, dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the falacious statement that all absences went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnessess of S/Shri Hira Singh, Head Watchman and Rajpal and Niranjan Singh, Watchmen. He also pointed that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, watchman who was on duty on that day. He pleaded that the standing orders have legal force and did not Act suspended during an agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union, —vide letter, Exhibit W-5. As regards issue No. 2, he argued that 'Retrenchment' would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of the Supreme Court in the case "Barsi Light Railway Co. Ltd., Versus-K.M. Jogalekar-in 1953 and still hold good being the judgement a larger bench. He further viewed that judgment in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

- (1) DCM *versus* Shambunath Mukherjee.
- (2) State Bank of India *versus* Subramaniam.
- (3) Hindustan Steel Ltd. *versus* Presiding Officer, Labour Court, Orissa.

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta *versus* Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment-1980 LLJ/336 (Bombay). He accordingly pleaded that the "Surplusage" for retrenchment is implicit in the scheme of Industrial Dispute Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contention. My findings issue-wise are as under :—

(1) From the facts and evidence it is clear that there was unrest amongst some workers due to demand raised by their union. It is also proved that the demands raised by the union were not considered fit for any action in view of the subsisting settlements, dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—vide its letter No. 38707, dated 21st August, 1981.

The workmen has also not prove that he wrote to the Management about is factum of Dharna nor he for made any application for leave so his absence. Besides it is on record that the management sent him letters (recall notices) under UPC and admitted in an indirect manner by the Union,—vide their letter, dated 17th March, 1981, Exhibit W-5. More so the management did send registered A/D letter which was returned by the Postal Authorities. The workmen has also admitted that he did not write to the management about his resumption of his duties after refusal by the management on 4th April, 1981. The factum of having reported on 4th April, 1981 has also not been proved. This all goes to establish that the workman remained absent unauthorisedly from 9th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach on contract with his own action which followed with an intimation to him by the management under clause 15 of the standing order.

The contention of the workman's counsel that action under clause 15 of the standing order was void as there was no dis-obedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of "recall notices" issued to him by the Management and deliberately ignored by him. Nor the plea of malafide or victimisation is forcible because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the Management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2(oo) of the Industrial Disputes Act, 1947 means termination of the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold the termination as a result of the act of employee. In this case the terminology of the clause 15 of the standing order which is reproduced below is quite material and different from that of the DCM.

Clause No. 15 of the Certified Standing Order Discontinuation of Service

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12(b) he shall lose lien on his on appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the Management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 days (fifteen) wages for every completed year of service to the workman, which would be equivalent to the compensation payable under Section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the management.

J.D. MEHTA,
Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana, Government, Chandigarh Labour and Employment Department, as required under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the Haryana Government Gazette.

J.D. MEHTA,
Sole Arbitrator.

No. 9(I)-81/6 Lab./14940.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J. D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Barister Singh, son of Shri Sudama Singh workman and the management of M/s. Hindustan Everest Tools Ltd., Jatheri Sonepat.

**BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER,
HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI—110027**

SHRI BARISTER SINGH, SON OF SHRI SUDAMA SINGH .. Workman

Versus

**THE MANAGEMENT OF M/S. HINDUSTAN EVEREST TOOLS LTD., JATHERI, DISTRICT
SONEPAT**

Appearances :

- (1) Shri Barister Singh, alongwith Shri Chander Singh.
- (2) Shri U.C. Pant, alongwith Shri D. N. Gupta.

ARBITRATION AWARD

The above-named parties appointed me as a Sole Arbitrator in terms of the arbitration agreement, dated 1st May, 1981. This arbitration agreement was published in the *Haryana Government Gazette (Extraordinary)*,—vide No. ID/RPK/67/81/26847, dated 27th May, 1981. The following point in dispute was referred to me for arbitration.

- (1) Whether the action taken by the management was justified and if not to what relief the workman is entitled to.

In response to the notices issued to the parties, the parties made their appearances. They filed statement of claims, written statement as well as rejoinder. The management filed copies of the documents in support of their contention in this case, while the representative of the workmen filed documents collectively for all the cases without being written by any individual worker. The following issues were framed on the basis of their pleadings with their consent.

- (1) Whether the workman was unauthorisedly absent exceeding 10 days from duty.
- (2) Whether the action taken by the management tantamounts to retrenchment, if so, what relief he is entitled to.

Thereafter the parties adduced their evidences and addressed arguments, copy of which was given in writing. The workman has appeared himself as a witness in this case. Shri Barister Singh deposed that he was on Dharna from 19th March to 3rd April, 1981 in Nehru Place (H.O. of the Company) where two of his comrades on hunger strike. He stated that he did not receive any letter from the management regarding his absence from duty during this period and have no knowledge of the rules and regulations of the Company. Nor he had read a copy of the standing orders displayed on the notice board. He added that the hunger strike/ Dharna was in support of the demands and he used to raise slogans there. He further stated that the dharna was got lifted by some officials of the Labour Department, who told that 7th April 1981 was fixed for discussions at Chandigarh and the duty to be resumed from tomorrow. He added that he reported for duty on the 4th April, 1981 at 7.45 A.M. but was stopped by the Security Officer though he waited there till 12.00 noon. In his cross-examination he admitted his postal address as correct and stated that he was not working anywhere at present. He affirmed that he mentioned about the Dharna in his written claim statement and there was about 30-32 workers when the Dharna was lifted on 3rd April, 1981. He denied the knowledge of contents of the letter delivered by the official as it was shown to the leaders. He told that he could not say the exact date when he joined Dharna either on 13th or 14th of March, 1981. He denied to have received letters dated 24th March, 1981 and 28th March, 1981 sent by the management under UPC and as well as the Registered A/D letter of 2nd April, 1981. He, however, could read the contents "लेने से इतकार वापिस" on the Registered A/D letter returned by the postal authorities. He could not tell the name of the Security officer who had stopped him at the gate on 4th April, 1981. He admitted that leave application is made on the same date or next day in case of emergency. He told that he could not recollect if he made any request for employment on the application form. But, however, recognised his signature on the application form Exhibit M-1, wherein observance of standing orders and rules of the company have been accepted by him. He admitted that he did not write to the management about his dharna with effect from 13th March, 1981 or 14th March, 1981 nor he wrote the management about taking him back on duty after he was stopped by the watchman on 4th April, 1981.

While the management examined S/Shri U.C. Pant, Dy. Manager (Personnel) and Mr. R. K. Dixit (Personnel Officer) Hira Singh, Head Watchman, Rajpal and Niranjan Singh, Watchmen, as witnesses.

Shri Pant stated that he visited Head Office (Nehru Place) as an official routine and also visited the same during 9th March to 3rd April, 1981. He met S/Shri Jagbeer Singh and Janardhan Ojha and exchanged 'Ram Ram' as well as with some other workers too. He further stated that there were many workers, who after performing their duties visited Nehru Place for Dharna and the number varied from time to time, as the number was not fixed nor the workers. He stated that the list of workers who are dismissed, discharged or resigned etc. is given to the Security Supervisor, to ensure that these workers are not allowed to enter the factory again. Only two workers namely S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981 as told to him by Shri Hira Singh, Head Watchman. But these workers did not wait at the gate for meeting him though he did not take more than half an hour to reach his office. He further deposed that there was intervention from the Labour Department but without any fruitful result. A copy of the standing order is displayed on the notice board and the leave procedure is generally known to the workers. He added that the workers, whose cases are under arbitration did not send any written explanation regarding their unauthorised absence despite notices issued excepting 2 workers namely Jagbeer Singh and Janardhan Ojha, who requested to take back on duty which was received very late. In his cross-examination, he admitted that there was conciliation meeting on general demand notice dated 6th January, 1981 which has since been rejected and filed by the Labour Department,—vide their endorsement No. 38707 dated, 21st August, 1981. He denied to have received the hunger strike notice,—vide letter dated 16th March, 1981 Exhibit W-4. He further confessed to have met the Labour Minister, Haryana, when the Deputy Labour Commissioner, Sonipat had called a conciliation meeting where he explained the

factual position to the Minister. He denied the receipt of letter dated 17th March, 1981 Exhibit W-5 but admitted the letters dated 3rd April, 1981 Exhibit W-6 and the management letter dated 15th March, 1981 Exhibit W-7, letter dated 17th March, 1981 Exhibit W-8 and letter dated 19th September, 1981 Exhibit W-9. He later denied that the names of the workmen have been struck off and affirmed that the workers who lost their lien on employment was due to un-authorised absence and denied any such action has been taken due to their union activities.

Shri Hira Singh, Head Watchman stated that he was on duty on 4th April, 1981 from 7 A.M. to 7 P.M. S/Shri Ram Chander and Suresh Kumar approached him at about 9 A.M. after being denied the entry by the watchman and wanted to meet Shri Pant. He went inside to seek instruction from Shri Pant, who instructed him to bring them in his office. But on his return he did not find S/Shri Ram Chander and Suresh Kumar at the gate. He added that no other workman came on the gate and met him on the day. In his cross-examination, he affirmed that he was on duty on 4th April, 1981 and denied any knowledge about Dharna by workers in Nehru Place. He also added that no other workmen excepting S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981. He vehemently denied that he has been tortured by the management to tender his evidence.

Shri Rajpal and Shri Niranjan Singh, watchmen, deposed that they were on duty on 4th April, 1981 at gate No. 1. Only S/Shri Ram Chander and Suresh Kumar were refused entry on that day on the advice and instruction received from the management and the head watchman was informed, who took further action. They further added that no other workman came on that day and stated that they know the leave procedure as well as the standing order. Shri Rajpal watchman, deposed that he was on duty on 19th April, 1981 from 7 A.M. to 3 P.M. 19th April, 1981 being Sunday, the factory was closed being weekly rest day, the question of S/Shri Janardhan Ojha and Jagbeer Singh coming on duty on that day does not arise.

In his cross-examination, he told that he knew S/Shri Janardhan Ojha and Jagbeer Singh. He told that he gets knowledge about standing orders from Time office and there was no other worker at gate excepting S/Shri Ram Chander and Suresh Kumar on 4th April, 1981.

Shri Rakesh Kumar Dixit (Personnel Officer) while tendering the evidence explained the procedure adopted in case of absenting workers and showed the muster roll for the year 1981 wherein the word 'left' have been recorded against the names of workers whose cases are under arbitration. He also deposed that he heard that workers namely Vikramapal, Chandermapal Ram Chander and Bagedan Prasad had got employment with M/s. Super Tools and Zandu Forgings, Bhiwadi (Raj). In his cross-examination, he could not tell the name of worker, who gave this information to him nor he had any knowledge about the agitation as he joined subsequently,

The parties also advances their arguments.

The learned representative of the workmen, drew my attention to the illegality of the orders passed by the Management by invoking Clause 15 of the standing order as there was no disobedience or defiance of the standing orders. He viewed that the workmen were on peaceful agitation following the Gandhian principles for the acceptance of their justified demands and the Dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off their names was uncalled for. He further elucidated that there are no such circumstances from which it can be inferred that he had left the services or had any such intentions. In this connection, he relied on the following awards contained in the cases cited below :—

(1) G.T. Lad *versus* Chemical and Fibres India Ltd. '79 LIC P. No. 290

(2) Buckingham Co. *versus* Venkatiah LLJ 1963 Page No. 638.

He also questioned the bonafide of the management in acting in harsh and perverse manner to crush the peaceful and constitutional activities of the union. He further challenged the action of the management that the termination tantamounted to retrenchment in the light of recent pronouncements of the Supreme Court as under :—

(1) State Bank of India *versus* Subramaniam 1967 1 LLJ 278.

(2) Hindustan Steel Ltd. *versus* Presiding Officer, Labour Court '76 LIC P. 766

(3) Delhi Cloth & General Mills Co., Ltd. *versus* Shanbunath Mukherjee 80 LLJ P. No. 1

(4) Mohana Lal *versus* Bharat Electronics Ltd. 81 Page LIC 806.

(5) Santosh Gupta *versus* State Bank of Patiala 80 LIC P. No. 687.

He accordingly contended that the management did not observe the conditions precedent to retrenchment and committed illegality, thus the workmen are entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written request was made explaining the reasons for his unauthorised

absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on Dharna excepting his lone statement. The number of workmen on Dharna, period of Dharna etc. have difference variations and thus cannot be accepted that a group of workers, i.e. 31 or so was constantly on dharna. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position —*vide* their letters Exhibit W-7 and W-8 and their stand has been vindicated by the Labour Department. Haryana, by rejecting the demand notice, —*vide* endorsement No. 38707 dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the salacious statements that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnessess of S/Shri Hira Singh, Head Watchman and Rajpal and Niranjan Singh, Watchmen. He also pointed that there is no truth in the statement of S/Shri Jagbeer Singh and Jarnardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement made by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union, —*vide* letter Exhibit W-5.

As regards issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi Light Railway Co., Ltd. versus K.N. Jogalekar in 1953—and still holds good being the judgment of a larger bench. He further viewed that judgment in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

- (1) *BCM versus Shambunath Mukherjee.*
- (2) *State Bank of India versus Subramaniam.*
- (3) *Hindustan Steel Ltd. versus Presiding Officer, Labour Court, and others.*

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta *versus* Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment 1980 LLJ 336 (Bombay). He accordingly pleaded that the "Surplusage" for retrenchment is implicit in the scheme of Industrial Dispute Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to be evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issuewise are as under :—

(1) From the facts and evidence it is clear that there was unrest amongst some workers due to demand raised by their union. It is also proved that the demands raised by the Union were not considered fit for any action in view of the subsisting settlements dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—*vide* its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of dharna nor he made any application for leave of his absence. Besides it is on record that the management sent him letters (recall notices) under UPC and admitted in an indirect manner by the Union,—*vide* their letter dated 17th March, 1981 Exhibit W-5. More so the management did send Registered A/D letter which was returned by the postal authorities with remarks "लेने से इनकार कर्य". The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the management on 4th April, 1981. The factum of having reported on the 4th April, 1981 has also not been proved. This all goes to establish that the workman remained absenteed unauthorisedly from _____ to _____ which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the standing order.

The contention of the workmen's counsel that action under clause 15 of the Standing order was void as there was no disobedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of "recall notices" issued to him by the management and deliberately ignored by him. Nor the plea of malafide or victimisation is forcible because the workman has himself to be blamed for the disregard of the standing order and normalice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the management counsel that the standing orders have got the force of law and deemed provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workmen remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studies and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in clause section 2 (00) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the standing order which is reproduced below is quite material and different from that of the DCM.

Clause No. 15 of the Certified Standing Order.

Discontinuation of Service.

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12 (b) he shall lose lien on his own appointment and it shall be deemed that he has lost the services from the date of his absence unless he explain his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 days (fifteen) wages for every completed year of service to the workman which would be equivalent to the compensation payable under Section 25(F) (b) of the Industrial Disputes Act 1947, besides his other dues lying undisbursed with the management.

Dated the

J. D. MEHTA,
Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour and Employment Department, as required under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the Haryana Government Gazette.

J. D. MEHTA,
Sole Arbitrator.

No. 9(I)-81/6Lab./14941—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana, (retired), Sole Arbitrator in respect of the dispute between Shri Vikramapal, son of Shri Ram Rattan, workman and the management of M/s. Hindustan Everest Tools Ltd., Jatheri, Sonepat.

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DY. LABOUR COMMISSIONER, HARYANA
RESIDENT OF D/E 137, TAGORE GARDEN, NEW DELHI, 110027

SHRI VIKRAMPAL, SON OF RAM RATTAN (WORKMAN)

versus

THE MANAGEMENT OF M/S. HINDUSTAN EVEREST TOOLS, LTD., JATHERI, SONEPAT
Appearances—

1. Shri Vikramapal along with Shri Chander Singh.
2. Shri U.C. Pant along with Mr. D.N. Gupta.

ARBITRATION AWARD

The above named parties appointed me as a sole arbitrator in terms of the arbitration agreement, dated 1st May, 1981 under section 10-A(3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the *Haryana Government Gazette (Extraordinary)*—vide No. ID/RTK/67/81/26854, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration:—

- (1) Whether the action taken by the management was justified and if not; to what relief the workman is entitled to.

On receipt of the notification usual notices were issued to the parties. The parties made their appearances, filed their statement of claims, the written statement as well as rejoinder. The management filed copies of documents in support of their contention in this case, while the representative of the workmen filed collective documents on behalf of the Union not being written by any individual worker. The following issues were framed on the basis of their pleadings with their consent.

- (1) Whether the workmen was unauthorisedly absent exceeding 10 days from duty.
- (2) Whether the action taken by the management tantamounted to retrenchment. If so, to what relief he is entitled to.

Thereafter, the parties led their evidences. The workman examined himself as his own witness. Shri Vikramapal deposed that he was on Dharna during the period from 16th March, 1981 to 3rd April, 1981 in Nehru Place (H. O. of the Company) in support of the demands raised and did not receive any letter of the management during this period. However, he further added that Mohan Singh Clerk of the Management met him while he was on Dharna and Shri Pant also used to pass that way. He further stated that an official of the Labour Department came on 3rd April, 1981 and got the dharna lifted with the assurance that the demand would be met and the worker would be taken back on duty. Thus, he went on duty on 4th April, 1981 but was stopped by the Chowkidar at gate whom he could recognise by face only. He further added that he had no knowledge about the rules and regulations of the Company and went to the office of the Labour Department at Sonepat for their demand after 4th April, 1981. In his cross-examination, he told that he could not recollect the number of workers on dharna on 16th March, 1981 nor he could recollect how many workers joined thereafter. He told that he did not know whether Shri Mohan Singh, Clerk met any other worker there. He affirmed his postal address, but denied to have received letter, dated 19th March and 24th March, 1981 (recall notices) sent by the management under UPC and also the Registered A/D letter returned by the postal authorities on 6th April, 1981 with the remarks लेने से इनकार बायत. "He added that he did not inform the management about his resorting to Dharna nor he made any written requests to the management to take him back on duty after the refusal by the Chowkidars on 4th April, 1981. He denied the knowledge about the leave application forms and the receipt of leave card.

While the management examined S/Shri U.C. Pant, Dy. Manager (Personnel) Shri R.K. Dixit (Personnel Officer), Shri Hira Singh, Head Watchman, Shri Rajpal and Shri Niranjan Singh, Watchman as witnesses, whose recorded statements are on file and the management closed the case.

The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workmen assailed the action of the management on the ground that there was no dis-obedience or defiance of the standing order which could compel the management to invoke clause 15 of the Standing orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for acceptance of their justified demand and the dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further elucidated that there are no such circumstances that he had left the services or had any such intentions. In this case he relied on the rulings in cases of:—

- (1) G.T. Lad—versus—Chemical & Fibres India Ltd., 1979—LIC P. No. 290.
- (2) Buckingham Co.—versus—Venkatiah—1963-LLJ, P. No. 638.

He also questioned the bona fide of the management in acting in harsh and hard manner to crush the peaceful and constitutional activities of the union and also challenged the action of the management that the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme Court viz. State Bank of India—versus—Subramianam Hindustan Steel Ltd.,—versus—Presiding Officer, Labour Court, DCM—versus—Shambunath Mukerjee etc. He accordingly pleaded that the management while not observing the condition precedent to retrenchment committed illegality, thus the workman is entitled to reinstatement with full wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written requests were made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman or dharna, excepting his one statement. The number of workmen on dharna, perIOD of dharna etc. have different versions and thus cannot be accepted that a group of workers i.e. 31 or so were constantly on dharna. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice, dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position—*vide* their letters dated Exh. W-7 and Exh-W-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice—*vide* encroachment No. 38707, dated 21st August, 1981. It is, obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the falacious statement that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S/Shri Hira Singh, Head Watchman and Rajpal and Niranjan Singh Watchman. He also pointed out that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger/strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union,—*vide* letter Exh. W-5.

As regards issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of five judges of the Supreme Court in a case "Barsi Light Railway Co. Ltd., *versus* K. N. Jogalekar" in 1953—and still holds good being the judgement of a larger bench. He further viewed that judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

DCM—*versus*—Shambunath Mukherjee.

State Bank of India—*versus* Subramaniam, and others

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar, Rajnikant Mehta *versus* Central Government Industrial Tribunal No. 1, that the termination of services of workmen for loss of confidence is not a retrenchment—1980—LLJ 336, (Bombay). He accordingly pleaded that the "surplusage" for retrenchment is implicit in the scheme of industrial dispute act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have gone through the evidences as well as pleas advanced while arguing the case. My findings issue-wise are as under:—

(1) From the facts and evidence it is clear that there was unrest amongst some workers due to demands raised by their union. It is also proved that the demands raised by the union were not considered fit for any action in view of the subsisting settlements dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected vide its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of dharna nor he made any application for leave of his absence. Besides it is on record that the management sent him letters (recall notices) under UPC and admitted in an indirect manner by the Union,—*vide* their letter, dated 17th March, 1981, Exh. W-5. More so the management did send Registered A/D letter which was returned by the postal authorities with the remarks "तन से इनकार आएस". The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the management on 4th April, 1981. The factum of having reported on 4th April, 1981 has also been proved. This all goes to establish that the workman remained absent unauthorisedly from 16th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the standing order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no 'disobedience' or defiance on the part of the workman has been found untenable as evident from documentary facts and the affirmation of "recall notices" issued to him by the management and deliberately ignored by him. Nor the plea of mala fide or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to with to the management for resumption of duties. Further, I am inclined to accept the argument of the management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certificated standing order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2(oo) of the Industrial Disputes Act 1947 means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold the termination as a result of the act of employees. In this case the terminology of the clause 15 of the Standing Order which is reproduced below is quite material and different from that of D.C.M.

Clause No. 15 of the Certified Standing Order—Discontinuation of service

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 11 and 12 (b) he shall lose lien on his own appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching to far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 days wages for every completed year of service to the workman which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Dispute Act 1947, besides his other dues lying undisbursed with the management.

J. D. MEHTA,
Sole Arbitrator.

Dated the 19th April, 1981.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour and Employment Department as required under section 17 of the Industrial Disputes Act, 1947 for favour of necessary publication in the Haryana Government Gazette.

J. D. MEHTA,
Sole Arbitrator.